

Court of Appeals, State of Michigan

ORDER

People of MI v Calvin Jamal Smith

Docket No. 265545

LC No. 03-011285-FH

E. Thomas Fitzgerald
Presiding Judge

Kathleen Jansen

Deborah A. Servitto
Judges

The Court orders that the motion to withdraw is GRANTED. Defendant-appellant's convictions are AFFIRMED, but we REMAND FOR RESENTENCING as discussed below. Withdrawing counsel shall mail by first-class mail to the appellant within 14 days of the date of certification of this order a copy of this order and the transcript and file proof of that service with the Clerk of this Court as required by MCR 7.211(C)(5)(c). Counsel is hereby notified that this Court may vacate this order granting the motion to withdraw if counsel fails to serve the transcript on appellant.

The final judgment of affirmance is STAYED for a period of 28 days after service of a copy of the transcript on the appellant, within which period defendant may, if he so desires, file a written communication with this Court, raising any issue or question which he wishes this Court to consider. Any such communication shall be treated by this Court as an application for rehearing.

After the expiration of 28 days, if defendant-appellant has not filed an application for rehearing, this matter is REMANDED to the trial court for RESENTENCING. The trial court sentenced defendant based on an incorrect score on prior record variable (PRV) 2. Defendant-appellant's prior record indicates only three prior low severity offenses; he should have received a score of twenty points, not thirty points on this variable. Correction of this score results in a change in his guidelines range. Thus, resentencing is required. *People v Francisco*, 474 Mich 82, 88-92; 711 NW2d 44 (2006). In addition, the sentencing court is directed to correct the judgment of sentence to reflect that defendant-appellant's felony-firearm sentence is to run consecutive to *both* the CCW and felon in possession sentences and that the latter sentences are to run concurrent to one another. MCL 750.227b(2).

We retain no further jurisdiction upon remand to the trial court.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUL 07 2006
Date

Sandra Schultz Mengel
Chief Clerk